

1 James H. Dyer
2 State Bar No. 005581
3 President, Pima County Bar Association
4 177 N. Church Avenue, Suite 101
5 Tucson, AZ 85701-1137
6 (520) 623-8258

7 **IN THE SUPREME COURT**
8 **OF THE STATE OF ARIZONA**

9 **In the Matter of PETITION TO**
10 **AMEND RULES FOR ADMISSION TO**
11 **THE BAR OF ARIZONA**

NO. Supreme Court No. R-06-0017

12 **COMMENT BY THE PIMA COUNTY**
13 **BAR ASSOCIATION ON PETITION**

14 Pursuant to Rule 28, Rules of the Arizona Supreme Court, the Pima County Bar
15 Association, through its Board of Directors, hereby comments upon the Petition by Timothy P.
16 Burr for a Revision of the Rules of the Arizona Supreme Court for the Admission of Attorneys to
17 the Practice of Law in the State of Arizona.

18 The Pima County Bar Association is a voluntary organization of attorneys and legal
19 professionals practicing within, or interested in the practice of law within, Pima County, Arizona.
20 Through its Board of Directors, the Pima County Bar Association seeks to fulfill its mission to
21 provide service and leadership to the public and to the profession, to provide to all people of Pima
22 County access to and awareness of the law, and to promote respect for and satisfaction in the
23 profession. As such, and because the Pima County Bar Association does not believe that the
24 proposed revisions to Arizona's Rules of Attorney Admission serve those interests, the Pima
25 County Bar Association opposes the revisions proposed by Mr. Burr.

26 **A. Suggested Revisions Do Not Serve Any Actual Need**

27 The Petition for revision of the Rule on Admissions is purportedly based on a need felt by
28 both the citizens of Arizona for the services of out-of-state lawyers, and the need of Arizona
lawyers to practice outside of the State. Absent the mere assertion that such a need exists, there

1 does not appear to be any actual evidence of such a need; certainly no evidence of a need that
2 would justify such a significant change in our rules of attorney admission.

3 One would think the most important factor in finding that this proposed change in our rules
4 of admission is even necessary is a showing that citizens of Arizona just cannot find a good lawyer
5 when they need one. The absence of statistical evidence in the Petition that the citizens of Arizona
6 are under-served by the current population of lawyers is telling. The evidence is quite to the
7 contrary: Arizona is, from county to county, inhabited by competent, well-trained, experienced
8 attorneys available to meet the legal needs of the citizens of Arizona. Currently, in Pima County
9 alone, there are 1391 attorneys who are members of the Pima County Bar Association, and
10 (presumably) there are many more attorneys here who are not members.

11 While this revision to our rules of admission may serve lawyers who wish to practice law
12 elsewhere, there is no indication that it will have a practical, positive affect on the people of the
13 State of Arizona. Though the Pima County Bar Association certainly wants only the best for its
14 lawyer-members, it must be remembered that the rules governing admission to practice are not
15 designed to allow people to practice law; they are designed to ensure that the general public is
16 properly served by those who will.

17 The revision to the rules as proposed does indeed require that any lawyer seeking to be
18 admitted to practice be “in good standing” in his or her home state. That is a fine requirement, but
19 that bar is rather low. Such a requirement certainly weeds out those practitioners who have been
20 disciplined and whose licenses have been suspended or revoked, but it does not betoken any
21 positive threshold level of competence in practice. Some may argue that the bar examination does
22 not either, but this revision would remove any such measure of general legal competence. The
23 demonstration of general competence required by a successful taking of the bar examination in this
24 State may be a blunt tool for determining legal skill, but it is a tool. As the Petition asserts, “the
25 bar examination is only one tool to determine an applicant’s competence.” That is certainly true,
26 but given the very few tools available to determine a practitioner’s competence, there is no reason
27 to remove that tool from the chest.

1 The proposed revision is designed to be an instrument of convenience for Arizona lawyers
2 who wish to practice elsewhere, and a method for ease of admission for foreign attorneys to come
3 to this state to engage in the practice of law. The revision would no doubt serve the need of large
4 multi-state law firms, and that need should not to be discounted. But that is not such a compelling
5 need that the traditional methods for admission should be abandoned. Certainly, large multi-state
6 firms are in a ready position to have their lawyers admitted in the normal course both in Arizona
7 or elsewhere. The ABA is certainly also in favor of this change, as part of its effort to further
8 nationalize the practice of law. The ABA has a concrete interest in being the national regulator
9 of a national practice of law, but that interest is not co-extensive with the interests of the State of
10 Arizona.

11 The Petition asserts as a “plus” that the State Bar of Arizona could set a fee for the
12 admission of foreign attorneys to Arizona far higher than the current fee to take the bar
13 examination, thus resulting in a positive revenue stream. Why should a barrier of wealth be set
14 even while a barrier of threshold competence is being removed? Does not setting a far higher fee
15 than the bar exam fee run the risk of blocking otherwise competent and capable foreign attorneys?
16 Simply, there will always be a hurdle to admission and there is no reason to remove a hurdle
17 intended to establish competence to practice law.

18 The Petition also asserts that Arizonans are protected because “nearly all” applicants will
19 have passed bar examinations in their own states. This means that not “all” will have. It also
20 means that, at best, applicants will have passed a bar examination the standards of which our
21 Supreme Court has had no hand in fashioning. Whether or not any individual state’s bar
22 examination which “nearly all” applicants will have passed, is rigorous or perfunctory, we will
23 have no way of knowing.

24 This proposed revision is at its heart a revision for the convenience of certain members of
25 the Bar without any concrete showing that the public would either benefit from the change or is
26 clamoring for it.

1 **B. Absent Actual Need for Service of Foreign Practitioners, There Is No Need to**
2 **Change the Rule**

3 Arizona has required a successful bar examination before admission to practice since 1925
4 – 82 years. The principle of “If it ain’t broke, don’t fix it” is certainly applicable here. The State
5 of Arizona has endeavored for years to uphold the highest standards of legal practice by its admitted
6 attorneys. From the ethics and professionalism courses mandated by the Supreme Court, to the
7 promotion and requirement of continuing legal education, to the rigorous disciplinary procedures
8 maintained and managed by the Arizona Supreme Court in conjunction with the State Bar, we are
9 rightfully proud of the level of professionalism of Arizona attorneys. We always have a long road
10 to travel to reach the level of professionalism and ethics we aspire to, but this revised rule will result
11 in a step backward. This revision will, in effect, open the floodgates to foreign practitioners with
12 very different traditions and senses of ethics and professionalism than that which has been inculcated
13 in Arizona practitioners. The current system at a minimum ensures a commitment to the practice
14 of law in Arizona rather than a whimsical mentality of reciprocal admissions.

15 The Pima County Bar Association is keenly interested in maintaining the level of
16 professionalism and the dedication lawyers admitted to practice here and practicing here have to
17 Arizona. Many, if not most, of those practicing law in Arizona were born outside of the state. Many
18 attended law school somewhere other than the University of Arizona or Arizona State University.
19 The requirement that folks take and pass the Arizona Bar Examination has not hindered those of us
20 from out of state from practicing law here.

21 The best evidence that this change is not needed is from the Petition itself. The Petition
22 asserts that other states have not experienced an influx of admissions by motion. And that may be
23 true. The example of Colorado is used. As the Petition states, “only” 124 lawyers were admitted
24 by motion in Colorado in 2005. If, however, Colorado has only experienced 124 applications by
25 motion in 2005, then what is the driving need to change 82 years of admission requirements in
26 Arizona? (And, with no disrespect to the great state of Colorado, Colorado does not have a
27 behemoth of a state like California on its immediate border.) This revision will cause the
28 establishment of a whole new bureaucratic and administrative necessity for 124 attorneys a year.

There is currently a method for admission *pro hac vice* in Arizona so that any foreign attorney may practice under limited circumstances within this state. Contrary to the Petitioner's opinion, the *pro hac vice* process is not a "lengthy" or arduous process. It is actually rather straightforward. Its limitations, which the revision seeks to avoid, is the need for a local counsel to be involved to ensure that local rules are being complied with, and the limit on repeated practice within the state by foreign attorneys. The process itself is, however, not a hurdle.

While nothing is an iron-clad guarantee of an ethical bar, and while the opening of this process to reciprocity is not a guarantee of the dilution of professionalism, the question is: if there is no driving need for an increase in the number of lawyers, if the public is not demanding more lawyers in the state, and if there is no segment of the population that is currently underserved, then why make the change?

CONCLUSION

For the foregoing reasons, the Pima County Bar Association respectfully requests that the proposed revisions to the rules of admission not be adopted, and the Petition be denied.

DATED this 1st day of May, 2007.

PIMA COUNTY BAR ASSOCIATION

James H. Dyer
President, Pima County Bar Association